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ANNEX III TO THE 1973 CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

ANNEX III (REGULATIONS FOR THE PREVENTION OF POLLUTION BY HARMFUL SUBSTANCES CARRIED BY SEA IN PACKAGED FORMS OR IN FREIGHT CONTAINERS, PORTABLE TANKS OR ROAD AND RAIL TANK WAGONS), AN OPTIONAL ANNEX TO THE 1973 INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, AS MODIFIED AND INCORPORATED BY THE 1978 PROTOCOL RELATING THERETO (MARPOL 73/78)

NOVEMBER 9, 1989.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 9, 1989.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate, Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons), an optional annex to the 1973 International Convention for the Prevention of Pollution from Ships, as modified and incorporated by the 1978 protocol relating thereto (MARPOL 73/78). I also transmit, for the information of the Senate, the report of the Department of State with its attached analysis of Annex III.

MARPOL 73/78 is the global agreement to control pollution from ships. Annex III establishes uniform regulations for the transport of packaged harmful substances, including packaging, marking/labelling, documentation, and stowage requirements and, if necessary, quantity limitations. It complements the other annexes to MARPOL 73/78, which relate to the transport of oil (Annex I) and harmful substances carried in bulk (Annex II), and to ship-generated sewage (Annex IV) and garbage (Annex V).

The United States ratified MARPOL 73/78 on August 12, 1980, along with Annexes I and II, and it entered into force for the United States on October 2, 1983. U.S. ratification of Annex III at this time would bring the annex into force. Moreover, agreement has been reached that, once in force, the Parties will adopt U.S.-sponsored amendments to the annex that will strengthen its provisions and make it a more effective environmental instrument.

U.S. ratification of MARPOL Annex III will be an important step in minimizing pollution of the world's oceans from discharges of packaged harmful substances. I recommend the Senate give early consideration to Annex III of MARPOL 73/78 and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 4, 1989.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmittal to the Senate for its advice and consent to ratification, Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons), an optional annex to the 1973 International Convention for the Prevention of Pollution from Ships, as modified and incorporated by the 1978 Protocol relating thereto (MARPOL 73/78).

MARPOL 73/78 is the global agreement to control accidental and operational discharges of pollution from ships. It includes a framework agreement setting forth general obligations, and five annexes that relate to particular sources of marine pollution. Two of these annexes are mandatory for all MARPOL Parties—Annexes I and II, which relate respectively to the transport of oil and harmful substances carried in bulk. The other three annexes are optional—Annex III, which relates to the transport of harmful substances in packaged form, and Annexes IV and V, which regulate ship-generated sewage and garbage respectively.

The United States ratified the 1978 Protocol (which incorporates with modifications the 1973 Convention) on August 12, 1980, along with Annexes I and II. The Protocol entered into force for the United States on October 2, 1983. On December 30, 1987, the United States ratified optional Annex V. The remaining annex—Annex IV—is still the subject of ongoing review and Senate advice and consent is not being sought at this time.

Annex III sets forth general regulations for the marine transport of harmful packaged substances. Many of these substances, such as pesticides and herbicides, are known to kill or retard the growth of marine life and to bio-accumulate in marine organisms, causing potential danger up the food chain, including health risks to humans as well as to birds and other wildlife that eat fish or shellfish. Annex III provides that the packaging of harmful substances must be adequate to minimize the hazard to the marine environment posed by their specific contents. Packages must be marked with a distinctive label indicating that the contents are harmful, and must be stowed so as to minimize the risk to the marine environment. In addition, ships must carry a special list or manifest setting forth the harmful substances on board and their stowage locations. Finally, parties are permitted to prohibit or impose quantity limita-

tions on the carriage of certain very hazardous substances. Exceptions are permitted in emergency situations. A more detailed analysis of each of the eight regulations that comprise Annex III is attached hereto for the information of the Senate.

Unlike Annexes I and II, which have been construed to apply only to seagoing vessels, Annex III will apply to all ships that carry harmful substances in packaged form. As with all other MARPOL 73/78 annexes, parties to Annex III will be required to apply its regulations to ships of non-party States using their ports or offshore terminals.

Article 3 of MARPOL 73/78 exempts warships, naval auxiliary and other ships owned or operated by a State and used in governmental non-commercial service, from the application of the Convention. Such ships, therefore, will be exempt from the application of the provisions of Annex III, although each party will be required to take appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, to ensure that such ships act in a manner consistent, so far as is reasonable and practicable, with Annex III.

Annex III will enter into force twelve months after the date on which not less than 15 States have become parties, the combined merchant fleets of which constitute not less than fifty percent of the gross tonnage of the world's merchant shipping. Thus far 38 States have ratified Annex III, constituting approximately 48.27 percent of the world's shipping tonnage. U.S. ratification would contribute sufficient tonnage (approximately 5 percent) to bring Annex III into force, and would demonstrate our continued resolve to protect the marine environment through cooperation within the international community.

Although the requirements imposed by Annex III are desirable and pose no difficulties for the United States, we have previously withheld ratification as we pursued amendments to Annex III that would make it more meaningful and enforceable. It had been hoped that such amendments would be approved in time for the United States to pursue ratification of Annex III in conjunction with Annex V. However, the greater complexities involved in the Annex III amendments made this impossible. It was not until last fall, after three years of negotiations, that the International Maritime Organization's Marine Environment Protection Committee (MEPC) agreed to U.S.-sponsored amendments to Annex III. These amendments contain clear criteria for the identification of harmful substances, strengthen the labelling and documentation requirements, and provide for implementation through an updated version of the International Maritime Dangerous Goods (IMDG) code, a set of recommended international safety standards for the carriage of dangerous goods. Although the amendments will not be formally adopted until after Annex III enters into force, the MEPC is in the meantime proceeding with the implementation of the standards imposed by the revised Annex III, through appropriate revision of the IMDG code. I recommend that the United States proceed with ratification now, rather than wait for formal adoption of the amendments. Without U.S. ratification, Annex III will not come into force and the amended version would have to be ratified by the 38 countries that have already ratified the Annex. U.S. ratification at this

time, in contrast, would bring Annex III into force and thereby permit the amendments to be adopted through the tacit amendment procedure specified in Article 16(2) of MARPOL 73/78. This amendment procedure, which was utilized with regard to Annex I and II after their entry into force and which is currently in process with regard to Annex V, was established to permit more effective and rapid adoption of technical amendments to MARPOL 73/78. U.S. acceptance of the amendments to Annex III will not require further advice and consent by the Senate.

Annex III will require implementing legislation which is being prepared. U.S. ratification of Annex III has the support of the U.S. Coast Guard and the Department of State and all other interested agencies of the Executive Branch, as well as environmental organizations and a substantial majority of the maritime industry. Although a few concerns were expressed about the economic impact of potentially more stringent packaging requirements, these are being addressed through the International Maritime Organization with the participation of U.S. industry.

Annex III will make a significant contribution to the protection of the marine environment, by substantially reducing the threat of harmful substances being released into the marine environment through collisions, groundings and other accident and operational causes. I recommend that Annex III be transmitted to the Senate for its advice and consent to ratification at an early date.

Respectfully submitted,

LAWRENCE S. EAGLEBURGER,
Acting Secretary.

Attachment: Analysis of Annex III.

ANALYSIS OF ANNEX III

REGULATION 1—APPLICATION

This provision states that Annex III applies to all ships carrying harmful substances in packaged forms, and prohibits the carriage of such substances except in accordance with the Annex. Parties are required to issue detailed requirements to implement Annex III so as to prevent or minimize pollution of the marine environment. Packagings of harmful substances must be treated as harmful substances unless adequate precautions have been taken to ensure that they contain no harmful residues.

REGULATION 2—PACKAGINGS

This provision requires packages to be adequate to minimize the hazard to the marine environment posed by the specific substance. The IMO has developed general guidance for the adequacy of packagings. This guidance specifies that marine pollutants should be carried in packagings which are capable of surviving when immersed in the sea for the time period necessary to effect a reasonable recovery in coastal sea areas without loss of contents. Survivability criteria should take into consideration the total packaging system used to contain the substance—for example, bags with inner plastic liners, consolidated by use of plastic wrapping, inside freight containers. In practice, the system consisting of waterproof packaging inside freight containers would be likely to meet the criteria for survivability.

REGULATION 3—MARKING AND LABELLING

This regulation requires that packages be durably marked with the correct technical name (as opposed to the trade name) and with a distinctive label indicating that the contents are harmful.

REGULATION 4—DOCUMENTATION

This provision requires ships carrying marine pollutants to maintain a special manifest or list, specifying the proper chemical name and location of each marine pollutant onboard. This list may be consolidated with the dangerous goods manifest required under Chapter VII of SOLAS provided a clear distinction is made between dangerous goods and marine pollutants. Shippers are required to certify that the shipment has been properly marked or labelled and is in proper condition for carriage.

REGULATION 5—STOWAGE

This regulation requires harmful substances to be properly stowed and secured onboard a vessel so as to minimize the hazards to the marine environment without impeding the safety of the

crew and ship. This means that the stowage requirements contained in SOLAS, Chapter VII, Part A, will take precedence in situations where they conflict with the Annex III stowage requirements.

REGULATION 6—QUANTITY LIMITATIONS

Regulation 6 allows Parties to prohibit or impose quantity limitations on the carriage of certain very hazardous substances. Such prohibitions or limitations are to be imposed only for sound scientific and technical reasons and after due consideration has been given to the characteristics of the ship, the packaging and the harmful substance. Because the quantities of harmful substances carried in bulk under Annex II are generally much greater than the quantities of packaged marine pollutants carried onboard dry cargo vessels, IMO has not to date identified a need to establish prohibitions or quantity limitations.

REGULATION 7—EXCEPTIONS

This provides that packaged harmful substances may be jettisoned only where necessary for the purpose of securing the safety of the ship or saving life at sea. In addition, Parties are required to take appropriate measures to regulate the washing of leakages overboard unless such measures would impair the safety of life or the ship.

REGULATION 8—NOTIFICATION

This regulation requires the master or owner of a ship to give 24-hour advance notification to the port authority before loading or unloading certain harmful substances designated by the port State.

International Convention for the Prevention of Pollution From Ships, 1973

Annex III

REGULATIONS FOR THE PREVENTION OF POLLUTION BY HARMFUL SUBSTANCES CARRIED BY SEA IN PACKAGED FORMS, OR IN FREIGHT CONTAINERS, PORTABLE TANKS OR ROAD AND RAIL TANK WAGONS

Regulation 1

Application

(1) Unless expressly provided otherwise, the Regulations of this Annex apply to all ships carrying harmful substances in packaged forms, or in freight containers, portable tanks or road and rail wagons.

(2) Such carriage of harmful substances if prohibited except in accordance with the provisions of this Annex.

(3) To supplement the provisions of this Annex the Government of each Party to the Convention shall issue or cause to be issued, detailed requirements on packaging, marking and labeling, documentation, stowage, quantity limitations, exceptions and notification, for preventing or minimizing pollution of the marine environment by harmful substances.

(4) For the purpose of this Annex, empty receptacles, freight containers, portable tanks and road and rail wagons which have been used previously for the carriage of harmful substances shall themselves be treated as harmful substances unless adequate precautions have been taken to ensure that they contain no residue that is hazardous to the marine environment.

Regulation 2

Packaging

Packaging, freight containers, portable tanks and road and rail tank wagons shall be adequate to minimize the hazard to the marine environment having regard to their specific contents.

Regulation 3

Marking and Labeling

Packages, whether shipped individually or in units or in freight containers, freight containers, portable tanks or road and rail tank wagons containing a harmful substance, shall be durably marked with the correct technical name (trade names shall not be used as the correct technical name), and further marked with a distincitve lable or stencil of label, indicating that the contents are harmful.

Such identification shall be supplemented where possible by any other means, for example by the use of the United Nations number.

Regulation 4

Documentation

(1) In all documents relating to the carriage of harmful substances by sea where such substances are named, the correct technical name of the substances shall be used (trade names shall not be used).

(2) The shipping documents supplied by the shipper shall include a certificate or declaration that the shipment offered for carriage is properly packed, marked and labeled and in proper condition for carriage to minimize the hazard to the marine environment.

(3) Each ship carrying harmful substances shall have a special list or manifest setting forth the harmful substances on board and the location thereof. A detailed stowage plan which sets out the location of all harmful substances on board may be used in place of such special list or manifest. Copies of such documents shall also be retained on shore by the owner of the ship or his representative until the harmful substances are unloaded.

(4) In a case where the ship carries a special list or manifest or a detailed stowage plan, required for the carriage of dangerous goods by the International Convention for the Safety of Life at Sea in force, the documents required for the purpose of this Annex may be combined with those for dangerous goods. Where documents are combined, a clear distinction shall be made between dangerous goods and other harmful substances.

Regulation 5

Stowage

Harmful substances shall be properly stowed and secured so as to minimize the hazards to the marine environment without impairing the safety of ship and persons on board.

Regulation 6

Quantity Limitations

Certain harmful substances which are very hazardous to the marine environment may, for sound scientific and technical reasons, need to be prohibited for carriage or be limited as to quantity which may be carried abroad any one ship. In limiting the quantity due consideration shall be given to size, construction and equipment of the ship as well as the packaging and the inherent nature of the substance.

Regulation 7

Exceptions

(1) Discharge by jettisoning of harmful substances carried in package forms, freight containers, portable tanks or road and rail

tank wagons shall be prohibited except where necessary for the purpose of securing the safety of the ship or saving life at sea.

(2) Subject to the provisions of the present Convention, appropriate measures based on the physical, chemical and biological properties of harmful substances shall be taken to regulate the washing of leakages overboard provided that compliance with such measures would not impair the safety of the ship and persons on board.

Regulation 8

Notification

With respect to certain harmful substances, as may be designated by the Government of a Party to the Convention, the master or owner of the ship or his representative shall notify the appropriate port authority of the intent to load or unload such substances at least 24 hours prior to such action.

Certified true copy of the English text of the International Convention for the Prevention of Pollution from Ships, 1973, done at London on 2 November 1973, the original of which is deposited with the Secretary-General of the Inter-Governmental Maritime Consultative Organization.

For the Secretary-General of the Inter-Governmental Maritime Consultative Organization:

Thomas Allen

London. 20 V. 82

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